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November 17, 2016

BY ECF, FEDERAL EXPRESS AND E-MAIL

Honorable Judge Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: Profit Withdrawal Litigation Testimony

Dear Judge Bernstein:

Dentons joins in the request of Andrew Kratenstein by letter dated November 14, 2016 for a conference to resolve the issues with respect to use of profit withdrawal ("PW") testimony in the defense of various adversary proceedings involving BLMIS accounts. This firm represents defendants with at least 6 accounts that were traded as arbitrage accounts until 1997.

In addition to the reasons set forth by Mr. Kratenstein for using the existing testimony, it is important to note that the profit withdrawal litigation brought to light for the first time since the Trustee commenced approximately 900 adversary proceedings against the innocent investors that his characterization of the BLMIS operations, which constitutes the majority of the allegations in every complaint, is likely inaccurate. Based on the testimony developed in the PW litigation, it seems that (a) not all accounts were managed in the same way; (b) the fraud probably did not begin earlier than 1992; and (c) there was trading in the arbitrage accounts. It is also abundantly clear that in many instances the Trustee does not have any third party documents corroborating transactions in the accounts prior to 1998. Although the Trustee wants to preserve his story of the fraud and the apparent strength of his evidence at all costs, it would be inequitable to allow the Trustee to prevail in litigation based upon material errors of fact.

The Trustee has (and has tapped) an unlimited budget. The defendants, on the other hand, do not have the resources to recreate the testimony. Accordingly, we join in the request on behalf of the Dentons clients for a discovery conference regarding the existing PW testimony.

Sincerely,



Carole Neville

cc: David Sheehan
Nicholas Cremona
Andrew Kratenstein